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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

## UNITED STATES BANKRUPTCY COURT

## EASTERN DISTRICT OF CALIFORNIA

## SACRAMENTO DIVISION

IN RE:

SK FOODS, L.P., A CALIFORNIA LIMITED  
PARTNERSHIP,

Debtor.

) Case No.: 09-29162- D-11  
)  
) FINDINGS OF FACT AND CONCLUSIONS  
) OF LAW REGARDING PRELIMINARY  
) INJUNCTION  
)  
) DATE: March 18, 2010  
) TIME: 1:30 p.m.  
) DEPT: D (Courtroom 34)

BRADLEY D. SHARP, et al.,

Plaintiff,

v.

SSC FARMS I, LLC, et al.,

Defendants.

)  
)  
) Adv. Pro. No. 09-2692-D  
) Docket Control No. SH-1

BRADLEY D. SHARP, et al.,

Plaintiff,

v.

SCOTT SALYER, as trustee of the Scott  
Salyer Revocable Trust, et al.,

Defendants.

)  
)  
) Adv. Pro. No. 10-2014-D  
) Docket Control No. SH-1

BRADLEY D. SHARP, et al.,

Plaintiff,

v.

SKF AVIATION, LLC, et al.,

Defendants.

)  
)  
) Adv. Pro. No. 10-2016-D  
) Docket Control No. SH-1

On the 18th day of March 2010, this Court considered the Motion of Bradley D. Sharp, Chapter 11 Trustee of SK Foods, LP for a preliminary injunction in the above-referenced actions. The Court considered the submissions and declarations in support of that Motion, and the Opposition and submissions of the Defendants in response to that Motion. The Court also took live testimony, afforded the parties the opportunity to cross-examine witnesses and heard oral argument by counsel for the parties. After affording the parties the foregoing hearing, and good cause having been shown, the Court granted the Trustee's motion and entered a Preliminary Injunction, which was filed on March 20, 2010 in each of the above-referenced actions. The Court makes the following findings of fact and conclusions of law in connection with its decision to enter the foregoing Preliminary Injunction.

### **FINDINGS OF FACT**

#### **Procedural History**

1. Trustee Bradley D. Sharp ("Trustee") is the duly appointed and acting Chapter 11 trustee for the Chapter 11 estates of SK Foods, L.P., a California limited partnership ("SK Foods"), and RHM Industrial/Specialty Foods, Inc., a California corporation, d/b/a Colusa County Canning Co. ("RHM", collectively with SK Foods, the "Debtors").

2. On or about May 7, 2009, the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et. seq.* (the "Bankruptcy Code."). Involuntary petitions were filed with respect to the Debtors on or about May 5, 2009 ("Petition Date").

3. On October 27, 2009, the Trustee filed adversary proceeding No. 09-02962 against Defendants SSC Farming, LLC ("SSC"), SSC Farms I, LLC ("SSC I"), SSC Farms II, LLC ("SSC II") (hereinafter "Quiet Title Complaint"). In that Complaint, the Trustee sought declaratory relief and to quiet title to certain parcels of real estate which were titled in the name of the Defendants, but for which Debtors claimed an equitable interest.

1       4. On January 11, 2010, the Trustee filed adversary proceeding No. 10-02014  
2 against SK PM Corp., SK Foods, LLC, SKF Canning, LLC, the Scott Salyer Revocable Trust  
3 (“SSR Trust”), Blackstone Ranch Corporation (“Blackstone”), Monterey Peninsula Farms, LLC  
4 (“Monterey”), Salyer Management Company, LLC (“SMC”), SK Farms Services, LLC, SK  
5 Frozen Foods, LLC, SS Farms, LLC (“SS Farms”), SSC, SSC I, SSC II, and SSC Farms III, LLC  
6 (“SSC III”) (hereinafter the “Substantive Consolidation Complaint”). In that Complaint, the  
7 Trustee sought to substantively consolidate the assets and liabilities of the Defendants with the  
8 Debtors’ Estates, and also sought to recover various fraudulent and/or preferential transfers  
9 against each of the Defendants.

10      5. On January 11, 2010, the Trustee filed adversary proceeding No. 10-02016  
11 against SKF Aviation, LLC and CSSS, LP d/b/a Central Valley Shippers (“CSSS”) (hereinafter  
12 the “Aviation Complaint”). In that Complaint, the Trustee sought recovery of certain fraudulent  
13 and/or preferential transfers to each of the Defendants.

14      6. Also on January 11, 2010, the Trustee filed another adversary proceeding at  
15 docket number 10-02015 against Scott Salyer (“Salyer”), SK PM Corp and the SSR Trust  
16 (hereinafter “Breach of Fiduciary Duty complaint”). In that Complaint, the Trustee sought  
17 money damages against the Defendants for breaches of fiduciary duties and breaches of the  
18 partnership agreement of SK Foods, L.P.

20      7. Subsequent to the filing of these complaints, the Trustee and the Defendants  
21 participated in settlement negotiations with the Honorable Michael McManus, pursuant to order  
22 of this Court (Adv. No. 10-2014 at Doc. No. 8).

23      8. On February 4, 2010, Salyer was arrested and charged with various crimes  
24 including bribery, wire fraud and mail fraud. In the context of several hearings over whether Mr.  
25 Salyer should be granted bail, certain records obtained by the government were made public for  
26 the first time. The disclosure of these records triggered the motions that are the subject of these  
27 Findings.

1       9. On March 9, 2010, the Trustee filed ex parte motion for a Temporary Restraining  
2 order and a Rule to Show Cause Why a Preliminary injunction should not be granted in four  
3 separate adversary proceedings: the Quiet Title action, the Substantive Consolidation action, the  
4 Aviation action and the Breach of Fiduciary action. The Trustee sought expedited relief on the  
5 grounds that Defendants were transferring their assets overseas and that these activities would  
6 compromise the Trustee's remedies in these adversary proceedings.

7       10. Notice of the Trustee's intent to file these motions was provided to Defendants'  
8 counsel in open court on March 8, 2010. The basis for the requested relief was also disclosed at  
9 that time. At that time, the Court advised counsel that it would hear the application on March 11,  
10 2010.

11       11. On March 9, 2010, the Trustee filed its motions in each of the four adversary  
12 proceedings and served Defendants' counsel with its moving papers by email. .

13       12. The Trustee's motions were supported by the following pleadings and evidence:  
14 the Declarations of Shondale Seymour (hereinafter "March 8, 2010 Declaration of Shondale  
15 Seymour"); Christopher Hart, Gregory C. Nuti filed with the motion, previous Declarations filed  
16 of record by Dan Kline (on August 19, 2009 (Doc. No. 612) in No. 09-29162), Shondale  
17 Seymour (on June 9 (Doc. No. 206) and August 18 (Doc. No. 613), 2009 in No. 09-29162), Lisa  
18 Crist (on May 8 (Doc. No. 33) and August 19 (Doc. No. 613), 2009 in No. 09-29162) and Paul  
19 Forgue (on May 8, 2009 (Doc. No. 56) in No. 09-29162), and a Request for Judicial Notice of  
20 the filings in the criminal proceeding against Mr. Salyer. (*See* Notice of Ex Parte Motion for a  
21 Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction at 5:22-26).  
22

23       13. On the evening of March 10, 2010, Defendants collectively filed an Opposition to  
24 the Ex Parte Applications.

25       14. At the hearing on March 11, 2010, all Defendants appeared through counsel.

26       15. At the conclusion of the hearing, the Court granted a Temporary Restraining  
27 Order in the Quiet Title action, the Substantive Consolidation Action and the Aviation action,  
28

1 and issued an Order to Show Cause returnable on March 18, 2010 at 1:30 pm as to why a  
2 Preliminary Injunction should not be issued.

3       16. Prior to the March 18, 2010 hearing, the Trustee submitted additional pleadings  
4 and evidence. The Declaration of Keith Whitson attached a memorandum of sale of certain real  
5 estate property owned by SSC, transcripts of two bail hearings for Mr. Salyer and a submission  
6 made by Mr. Salyer in his criminal action. The Declaration of Michael Carlson attached  
7 subpoenas that the Trustee had issued on the Defendants to produce records at the hearing, and  
8 subpoenas issued on Bank of the West, Mechanics' Bank and Google. Declarations of  
9 custodians of records for Bank of the West and Mechanics' Bank were also filed.

10      17. Prior to the March 18, 2010 hearing, the Defendants filed objections to the  
11 Trustee's evidence, a further brief in Opposition and excerpts from a deposition of Shondale  
12 Seymour and a transcript of the deposition of Wayne Boos.

13      18. During the March 18, 2010 hearing, the Trustee presented live testimony by  
14 Shondale Seymour, and the Defendants had the opportunity to cross-examine her both on that  
15 testimony and on the contents of the declaration she had submitted. At Defendants' request, the  
16 Trustee also produced Lisa Crist (whose declaration was also referenced in the moving papers)  
17 for cross-examination at the request of Defendants, but at the hearing, the Defendants declined  
18 the opportunity to cross-examine her. Defendants had also requested that FBI Agent Artley be  
19 made available for cross-examination at the March 18, 2010 hearing. Mr. Artley was not at the  
20 March 18, 2010 hearing. Before the hearing, the Trustee offered to make Paul Forgue and Dan  
21 Kline available for cross-examination; the Defendants did not request that either of them be  
22 present.

23      19. Before the hearing, the Trustee had requested that Defendants make Wayne Boos  
24 available for cross-examination at the hearing. Mr. Boos was not at the March 18, 2010 hearing.

25      20. After considering the submissions of the parties, the evidence and arguments  
26 presented at the March 18, 2010 hearing, and having ruled on the party's objection to evidence as  
27

1 more fully set forth below, the Court finds the Trustee is likely to succeed on the merits, and  
2 makes the following findings.

3

4 Facts Relating to the Defendants Transferring Assets

5 21. In the context of a related adversary proceeding (Bradley D. Sharp v. CSSS, LP,  
6 Adv. No. 09-2543, hereinafter the “Drum-Line Litigation”), this Court issued a temporary  
7 restraining order on August 24, 2009 prohibiting CSSS, LP (“CSSS”) from selling, transferring  
8 or encumbering the drum line. On September 3, 2009, the Court issued a preliminary injunction  
9 continuing the restraints and injunctions imposed in the August 24, 2009 Order (Docket Number  
10 34 in Adv. No. 09-2543).

11 22. Notwithstanding the existence of this Court’s orders to the contrary, the drum line  
12 was shipped overseas on or about August 31, 2009 (Doc. No. 73, Exhibit B, at Adv. No. 09-  
13 2543).

14 23. The drum line is one of many assets purportedly owned by Defendants but which  
15 the trustee alleges relate to the Debtor’s business and in which the Debtor has claimed an  
16 interest. (See Complaint in Adv. No. 09-2543.)

17 24. The Trustee alleges that Salyer and the Farming Entities (SSC, SSC I and SSC II)  
18 are attempting to sell real estate (“Wastewater properties”) in which the Debtor’s Estate claims  
19 an interest. The Farming Entities previously successfully objected to *lis pendens* on those  
20 properties. In September 2009 the Farming Entities entered into sale agreements with respect to  
21 certain of these properties. See Declaration of Christopher Hart, Exhibit 1; Declaration of Keith  
22 Whitson, Exhibit 1.

23 25. The Debtor’s Estate claims an equitable interest in the property held by the  
24 Farming Entities (See Quiet Title Complaint).

25 26. In addition, the Trustee alleges the Defendants have taken steps to transfer or sell  
26 other assets that are either alleged to be assets of the Estate or are the subject of  
27 preference/avoidance actions. Salyer was recently arrested on a number of different charges,

1 including alleged violations of the Racketeer Influenced and Corrupt Organizations Act and mail  
 2 and wire fraud. In that criminal matter, the government filed a Motion seeking Salyer's Pretrial  
 3 Detention and filed dozens of exhibits in support of that motion (Request for Judicial Notice,  
 4 Exhibits 1-3).

5       27. Based on the allegations in the criminal proceeding, the Trustee alleges that  
 6 Defendants have been transferring large sums of money from accounts in the name of the  
 7 Defendants to bank accounts in Liechtenstein, the West Indies and Australia, among other  
 8 places. The government apparently argued in the criminal matter that these transfers evidence  
 9 an intent to flee the country. *See* Declaration of Keith Whitson, Exhibits 2, 3 and 4 (Doc. No.  
 10 28)

11       28. The Trustee submitted declarations from the custodians of records of Bank of the  
 12 West and Mechanics' Bank that authenticate and describe certain bank records evidencing large  
 13 transfers of money from the Defendants' accounts to other bank accounts, including overseas  
 14 accounts. Declaration of Patrick Salcido, Bank of the West (Doc. No. 39) (Exhibit W);  
 15 Declaration of Annette Bartlett, Mechanics' Bank (Doc. No. 40) (Exhibits JJ, KK and LL).  
 16 Those bank records reference the following transactions, among others:

Date	From	To	Amount	Source
4/16/09	SS Farms (Bank of the West)	SS Farms II, LLC (Mechanic's Bank)	\$1,500,000	Exhibit X
6/30/09	Mechanic's Bank	First Republic Bank, San Francisco	\$1,000,000	Exhibit KK
9/4/09	Mechanic's Bank	Volksbank Liechtenstein and Fast Falcon, LLC in Charleston, Nevis West Indies	\$250,000	Exhibit LL
9/10/09	Mechanic's Bank	Volksbank Liechtenstein and Fast Falcon, LLC in Charleston, Nevis West Indies	\$250,000	Exhibit LL
9/11/09	Mechanic's Bank	Volksbank Liechtenstein and	\$250,000	Exhibit LL, HH, II

1		Fast Falcon, LLC in Charleston, Nevis West Indies		
2	9/14/09	Mechanic's Bank	Volksbank Liechtenstein and Fast Falcon, LLC in Charleston, Nevis West Indies	\$2,750,000
3	9/17/09	SK PM Corp (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$27,375.44
4	9/17/09	SK Foods, LLC (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$17,911.47
5	9/17/09	SARS, LLC (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$35,459.17
6	9/17/09	CSSS, LP (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$25,054.27
7	9/17/09	CSSS, LP (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$10,201.20
8	9/17/09	SS Farms, LLC (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$9,043.83
9	9/17/09	SS Farms, LLC (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$32,895.92
10	9/17/09	SSC Farming, LLC (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$4,934.49
11	9/17/09	SSC Farming, LLC (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$20,529.18
12	9/17/09	SSC Farms I, LLC (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$83.47
13	9/17/09	SSC Farms II, LLC (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$69.47
14	9/17/09	SSC Farms III, LLC (Bank of the West)	SSC Farms II, LLC (Mechanic's Bank)	\$33,712.04
15	9/28/09	SSC Farms II, LLC (Mechanic's Bank)	First Republic Bank, San Francisco	\$100,000
16	9/30/09	SSC Farms II,	First Republic Bank,	\$100,000
17				Exhibit KK
18				Exhibit KK
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1	LLC (Mechanic's Bank)	San Francisco		
2	10/13/09	Mechanic's Bank	Volksbank Liechtenstein and Fast Falcon, LLC in Charleston, Nevis West Indies	\$250,000
3	11/10/09	Scott Salyer Revocable Trust (Mechanic's Bank)	Westpac Bank (Australia)	\$303,837.03
4	11/12/09	Scott Salyer Revocable Trust (Mechanic's Bank)	Westpac Bank (Australia)	\$508,808.47

10        29.     The Trustee also provided the Court with a number of documents from the  
 11 criminal proceeding against Scott Salyer that purport to be emails from the email accounts of  
 12 Defendant Scott Salyer (see Request for Judicial Notice at Exhibits F, I, J, K, P, R, S, X, Y, Z,  
 13 AA, BB, CC, DD, GG, HH, II, NN, OO, PP, and RR). The Trustee alleges these documents also  
 14 describe the Defendants' attempts to transfer funds to overseas accounts, and are consistent with  
 15 the bank records.

16        30.     The Trustee served subpoenas on the custodian of records of each of the  
 17 Defendants requiring them to bring to the Preliminary Injunction hearing on March 18, 2010,  
 18 copies of all the bank records and emails submitted by the Trustee, as well as other documents  
 19 concerning the transfer of funds or other assets (Declaration of Michael Carlson (Doc. No. 38)).  
 20 The Defendants objected to the subpoenas and did not produce the responsive documents at the  
 21 hearing.

22        31.     The Trustee also produced other documents in which the Trustee asserts  
 23 Defendants admitted that they had been transferring assets overseas (Declaration of Keith  
 24 Whitson, Exhibits 2, 3 and 4 (Doc. No. 28)). In particular, at a February 26, 2010 hearing  
 25 addressing Mr. Salyer's request for bail, the following colloquy occurred between the Court and  
 26 Mr. Segal, counsel to Mr. Salyer:

27              THE COURT: . . . Why the movement of all of these wire transfers to the  
 28 bank in Zurich?

1 MR. SEGAL: In the first case, as we explained in our moving papers,  
2 \$1.2 million of the monies that were moved to – overseas to  
3 a corporation which was managed by the trust was the  
4 result of the settlement of a dispute between the trustee in  
bankruptcy for SK Foods, Bradley Sharp, and the  
daughters' estate. . . . (p. 24, line 20 to p. 25, line 2)

5       The farming enterprises which had relied upon its  
6 business dealings with SK Foods were suffering financially  
7 and could not meet the requirements of planting crops and  
hiring employees, so those farming entities were faltering.  
8 So the best opportunity for the girls, the trust for the girls to  
be successful in the future, as to find places to invest the  
9 money other than in the properties and the businesses  
10 which were going under in the United States.

11       There were two excellent places to use that money.  
12 One excellent place to use that money was in Australia and  
New Zealand. . . .(p. 26, lines 11 through 21).

13 THE COURT: Why wouldn't that be wired to Australia or New Zealand?  
14       Why would it be wired to a Swiss bank?

15 MR. SEGAL: Because it was – because that's where the central account  
16 was located for the trust. . . .(p. 27, lines 7 to 10)

17       The same thing was happening with the deposits  
18 made in the account in Switzerland. It had intended to be  
used to shore up Cedenco and for business expenses. And  
19 the credit card on that account was being used by Mr.  
Salyer for his travel expenses with the permission of the  
20 estate to try to find other business opportunities in Europe,  
because as the letters received say, and the letters are very  
21 clear about it from individuals who know them, Mr. Salyer  
could not find business opportunities in the United States.  
It was essentially he was being hounded by the lenders, and  
22 because his reputation had suffered because of this  
23 investigation.

25       So, what he did was he was looking for business  
26 opportunities in Europe as well as trying to shore up  
Cedenco in Australia. Those business opportunities were  
27 all over Europe, and so he was looking for a centralized  
banking location. . . . (p. 28, lines 8 through 23)

1 He was trying to buy shares in Inventco and he was  
2 looking for other business opportunities. He needed fund  
3 from those accounts to do that, and funds from those  
4 accounts were actually used. . . . (p. 29, lines 8 through 10)  
5

6 And so he was using that money that was in that  
7 account to try to promote business interests. . . . (p. 29, line  
8 24 to p. 30, line 1)

9 32. Similarly, at a March 3, 2010 hearing, Mr. Segal made the following statement to  
10 the Court:

11 MR. SEGAL: . . . The government has shown through documents that he took  
12 from open emails that Mr. Salyer had caused some money to be  
13 accumulated from various corporations, and sent overseas. (p. 16,  
14 lines 15 through 17)

15 So I would indicate to the Court that I do not think that  
16 money overseas is indicia of anything other than the fact that it's  
17 there and that doesn't indicate that the defendant has a right to it or  
18 that he'll make claim to it or that he'll use it for some nefarious  
19 purpose. (p. 22, lines 1 through 5).

20 33. Finally, in a submission to the Court in the criminal matter, Mr. Salyer stated as  
21 follows:

22 While there are accounts overseas, they have been used for business  
23 purposes and much of those deposited funds belong to Mr. Salyer's  
24 daughters from a court-approved settlement with the bankruptcy  
25 Trustee and from tax refunds generated by the businesses. . . . No  
26 money was hidden overseas, the funds were transferred overseas  
27 through normal banking channels and any funds presently in foreign  
28 bank accounts can be ordered transferred to banks in the United States.  
(pg. 6, line 20 to page 7, line 1). *See also* page 27, lines 1 through 5.

29 34. The Defendants did not present any evidence at the hearing to counter the  
30 evidence submitted, and assertions made, by the Trustee.

31 Facts Relating to the Claims Made in the Adversary Proceedings

1       35. The Court finds that the testimony of Shondale Seymour both during the  
2 Preliminary Injunction hearing and in her declarations was responsive, candid, and credible  
3 (Transcript of March 18 hearing).

4       36. Although Ms. Seymour's March 8, 2010 Declaration does not, in and of itself,  
5 provide sufficient foundation for all of the statements in her declaration, her testimony during  
6 direct examination provided further evidence regarding the sources and extent of her personal  
7 knowledge, and the Court finds that she has personal knowledge of, and is competent to testify  
8 to, the statements set forth in her declarations and in her live testimony (Transcript of March 18  
9 hearing).

10      37. The various Salyer-owned entities have been collectively referred to as "Salyer  
11 Enterprises" or "SK Foods Group". *See* October 16, 2009 Memorandum Decision, p. 2 (Doc. No.  
12 865 in No. 09-29162); August 19, 2009 Declaration of Dan Kline, ¶5 (Doc. No. 612 in No. 09-  
13 29162), and September 15, 2009 Declaration of Donald Puttermann, ¶3 (Doc. No. 727 in No. 09-  
14 29162).

15      38. The number of related entities and their similar sounding names appear to have at  
16 times caused confusion to all concerned. October 16, 2009 Memorandum Decision, p. 2, n.2  
17 (Doc. No. 865 in No. 09-29162).

18      39. Debtor is owned, directly and indirectly, by the Scott Salyer Revocable Trust and  
19 two other trusts set up for Mr. Salyer's daughters. *See* May 8, 2009 Declaration of Lisa Crist,  
20 ¶18 (Doc. No. 33 in No. 09-29162).

21      40. The Trustee alleges these same entities ultimately owned and controlled all of the  
22 other Defendants. August 19, 2009 Declaration of Shondale Seymour, ¶7, Exhibit 2 (Doc. No.  
23 613 in No. 09-29162) and March 8, 2010 Declaration of Shondale Seymour, ¶¶4, 5, Exhibit 1.  
24 For example, as demonstrated by the Salyer Enterprises flowchart of related entities, Blackstone  
25 Ranch Corp ("BSR") is owned 100% by the Scott Salyer Revocable Trust ("SSR Trust").  
26 Similarly, the SSR Trust owns 60% of SS Farms and SSC (the Stephanie Ann Salyer Trust  
27 ("SAS Trust") and the Caroline Gazelle Salyer Trust ("CGS Trust") each own 20% as well).

1 SSC I and II are each owned 50% by the SSR Trust and 50% by the SAS Trust (*Id.*). See March  
2 8, 2010 Declaration of Shondale Seymour, ¶4, Exhibit 1.

3 41. Exhibit 1 to Ms. Seymour's Declaration is a one-page flow chart that identifies  
4 the web of relationships between the various entities, and demonstrates that the Defendants are  
5 owned, directly or indirectly, by Mr. Salyer, his daughters, or trusts set up in their names. *Id.*,  
6 ¶5.

7 42. Salyer also controlled each of these entities as the Manager, Officer, Director,  
8 Sole Shareholder or Trustee of each entity. *Id.*, ¶6.

9 43. Together, these various entities grew, harvested, processed and readied for  
10 shipment tomatoes and other crops. SSC, SSC I and SSC II grew the tomatoes and held title to  
11 the land. SSF would harvest the tomatoes and provided farming services to SSC, SSC I and SSC  
12 II. SSF then would provide the vegetables to SK Foods or RHM for processing. March 8, 2010  
13 Declaration of Shondale Seymour, ¶7. As part of the processing, SK Foods/RHM would  
14 discharge wastewater on the land owned by SSC, SSC I and SSC II. *Id.*  
15

16 44. To process the tomatoes, SK Foods used 10,000 wood bins, which are owned by  
17 the SSR Trust. It also used a computer system that is owned and/or leased by Salyer American  
18 Fresh Foods ("SAFF"). SK Foods also used fiber drums that are supplied by CSSS and engaged  
19 CSSS to load the tomatoes onto a rail line for shipment. March 8, 2010 Declaration of Shondale  
20 Seymour, ¶¶7-8.

21 45. Each of these related entities, at least in theory, had a distinct role in this process,  
22 but from a financial perspective, each entity was dependent upon the other entities for their  
23 survival. *Id.*, ¶9-22. *See also* Declaration of Donald J. Puttermann in Support of Opposition to  
24 Motion to Disqualify Kasowitz, ¶7 (Doc. No. 782 in No. 09-29162) ("Most but not all of the  
25 entities included with Salyer Enterprises were involved with tomato growing, harvesting,  
26 processing and/or sales, and also the growing, harvesting, marketing and sales of other  
27 vegetables and vegetable products.").

1       46.     The Trustee contends Defendants had little to no operations outside of its  
 2 relationship with the Debtor. For example, SSC I and SSC II relied on two sources of revenue,  
 3 each of which came from SK Foods. Similarly, almost all of SSC Farming's crops were sold to  
 4 SK Foods, and ninety percent of the crops harvested by SS Farms were processed by SK Foods.  
 5 Other Defendants similarly had no independent operations. March 8, 2010 Declaration of  
 6 Shondale Seymour, ¶¶23-30.

7       47.     Similarly, the Trustee alleges the Defendants were never capitalized or operated  
 8 for profit. *Id.*, ¶¶31-37.

9       48.     The Trustee alleges the Debtor and the Affiliated Entities did not deal with each  
 10 other at arm's length.

11      49.     Money was transferred back and forth between the Defendants when an Affiliate  
 12 needed money, not necessarily when it was due under a contract or when the Affiliate provided  
 13 some goods or services to the Debtors. *Id.*, ¶¶51-59.

14      50.     Payment of inter-company obligations was frequently deferred and 'caught-up' at  
 15 various intervals, often at the end of a tax year. June 9, 2009 Declaration of Shondale Seymour,  
 16 ¶7, 13 (Doc. No. 206 in No. 09-29162). This pattern included payment for the right to discharge  
 17 wastewater on land purportedly owned by the Farming Entities. *Id.*, ¶8; *See also* March 8, 2010  
 18 Declaration of Shondale Seymour, ¶¶52.

19      51.     The pricing of products or services provided by one entity to another was not  
 20 generally negotiated, but rather, was set by Salyer who controlled both parties. In some  
 21 instances, Salyer retroactively reset prices charged to SK Foods by the Defendants. March 8,  
 22 2010 Declaration of Shondale Seymour, ¶¶ 54-55. For example, near the end of 2008, when  
 23 SSC III and SSF were losing money, Salyer unilaterally changed the terms of the contracts so  
 24 that SK Foods was charged additional amounts. *Id.*, ¶55.

25      52.     Indeed, in many instances, the related companies did not have any written  
 26 contracts with each other. For instance, although CSSS provided the fiber drums and rail trans-  
 27 loading for SK Foods, there was no contract describing the terms of this relationship. Similarly,

1 there was no contract with SAFF for the use of the computer system. March 8, 2010 Declaration  
2 of Shondale Seymour, ¶38.

3       53. Records of the various entities were stored and maintained together. Paper  
4 records of the various entities were stored at SK Foods' places of business or in storage units  
5 under SK Foods' control. *See August 19, 2009 Declaration of Shondale Seymour, ¶4 (Doc. No.*  
6 613).

7       54. The Affiliated Entities' electronic documents were stored on computer systems  
8 owned and maintained by SK Foods. August 19, 2009 Declaration of Dan Kline, ¶10-14 (Doc.  
9 No. 612). For instance, electronic documents related to insurance were maintained in a folder on  
10 the public drive entitled "Admin/Insurance." Similarly, electronic documents related to human  
11 relations activities were stored on the same public drive under the folder "Admin/HR". Financial  
12 records from year 2007 and beyond for many of the Defendants were similarly stored in a folder  
13 entitled "2007 Monthly Closings." Again, documents relating to numerous Defendants,  
14 including SK Foods, were contained within this folder. *See August 19, 2009 Declaration of Dan*  
15 *Kline, ¶15 (Doc. No. 612).*

16       55. All Defendants used the SK Foods email addresses and the SK Foods.com  
17 domain name. August 19, 2009 Declaration of Shondale Seymour, ¶4 (Doc. No. 613 in No. 09-  
18 29162); August 19, 2009 Declaration of Lisa Crist, ¶13 (Doc. No. 614 in No. 09-29162).

19       56. Some of SK Foods employees had access to all of these records. August 19, 2009  
20 Declaration of Dan Kline, ¶7, 8 (Doc. No. 612 in No. 09-29162). SK Foods employees also  
21 regularly accessed these records for the benefit of, and at the specific request of, the Defendants.  
22 August 19, 2009 Declaration of Lisa Crist, ¶14 (Doc. No. 614 in No. 09-29162).

23       57. The Debtors and some or all of the Affiliated Entities shared management.  
24 Shondale Seymour served as CFO of Debtor and of various Affiliated Entities, including  
25 Blackstone, SS Farms and SSC. June 9, 2009 Declaration of Shondale Seymour, ¶1 (Doc. No.  
26 206 in No. 09-29162). Lisa Crist was Executive Vice President of Administration of the Debtors  
27 and various Affiliated Entities. May 8, 2009 Declaration of Lisa Crist, ¶1, 3 (Doc. No. 33 in No.  
28

1 09-29162). Steve King, SK Foods' former Vice President of Operations also provided senior  
 2 management oversight for CSSS and for certain activities of SSC, SSC I and SSC II. Richard  
 3 Emmett, SK Foods' former Vice President of Ag Operations, also provided senior management  
 4 oversight for SS Farms, SSC, SSC I and SSC II. August 19, 2009 Declaration of Lisa Crist, ¶4  
 5 (Doc. No. 614 in No. 09-29162). Jeanne Johnston was responsible for business development  
 6 matters for the SK Foods Group in its entirety, including marketing materials and also served as  
 7 Mr. Salyer's executive assistant for all matters relating to the Salyer family's entities. September  
 8 15, 2009 Declaration of Donald Puttermann, ¶5 (Doc. No. 727 in No. 09-29162).

9       58. Most management were paid by the Debtors, even though they performed services  
 10 for other entities. August 19, 2009 Declaration of Lisa Crist, ¶4 (Doc. No. 614 in No. 09-  
 11 29162); *see also* March 8, 2010 Declaration of Shondale Seymour, ¶¶39-50.

12       59. Individuals in Debtor's accounting department performed accounting functions  
 13 for many of the Defendants. June 9, 2009 Declaration of Shondale Seymour, ¶2 (Doc. No. 206  
 14 in No. 09-29162). This included accounting functions related to the Farming Entities' real  
 15 estate. *Id.*, ¶4.

16       60. SK Foods' IT department performed IT functions for the Affiliated Entities.  
 17 August 19, 2009 Declaration of Dan Kline, ¶7, 8 (Doc. No. 612 in No. 09-29162).

18       61. As of January 2009, with the exception of one administrative staff and a few farm  
 19 hands, all other administrative and operations support for the Farming Entities were provided for  
 20 and paid for by SK Foods. August 19, 2009 Declaration of Shondale Seymour, ¶8 (Doc. No. 613  
 21 in No. 09-29162). These functions included human resources, administration, IS/IT functions  
 22 and accounting. *Id.*

23       62. The Trustee alleges the Debtors made payments on invoices for liabilities  
 24 incurred by other related entities, reimbursed related entities for costs spent on tenant  
 25 improvements at the headquarters locations in Monterey, and provided funding to certain related  
 26 entities to repay intercompany liability of other related entities with limited apparent benefit to  
 27 the Debtors. May 11, 2009 Declaration of Paul Forgue, ¶ 7 (Doc. No. 56 in No. 09-29162).

1       63. Historically, there has been a significant number of related party transactions in  
2 which funds were diverted from the Debtors to Defendants without an adequate explanation.  
3 May 11, 2009 Declaration of Paul Forgue, ¶17 (Doc. No. 56 in No. 09-29162). As of January  
4 31, 2009, five different Affiliates owed SK Foods approximately \$10 million. *Id.* After  
5 February 28, 2008, an additional \$6 million flowed between the Debtors and Defendants. *Id.*

6       64. There are numerous examples of other intercompany transfers for no apparent or  
7 documented reason spanning many years up to and including 2009. For example, in December  
8 2006, \$4 million from SK Foods was used to allow two other related entities, RHM and SK  
9 Aviation to make tax prepayments (March 8, 2010 Declaration of Shondale Seymour, ¶74).  
10 Similarly, in April 2009, Salyer withdrew \$1.7 million from SS Farms and deposited those funds  
11 into his personal account. He represented that he was using those funds to pay down a note on  
12 which SSC was an obligor, and that by paying off this note, the SSC land could be used as  
13 collateral for a separate loan to another Salyer entity, SAFF (March 8, 2010 Declaration of  
14 Shondale Seymour, ¶¶58). Ms. Seymour presented many other examples of unexplained  
15 intercompany transfers with no apparent consideration. See March 8, 2010 Declaration of  
16 Shondale Seymour, ¶¶ 68-83.

17       65. SK Foods itself attempted to reconcile these various intercompany transactions  
18 when various lenders started questioning the practices. Despite this attempt to track all such  
19 transactions and the underlying reasons for such transactions, SK Foods ultimately did not  
20 determine the purposes for all the transactions or reconcile the books. (March 8, 2010  
21 Declaration of Shondale Seymour, ¶ 86 and live testimony on March 18, 2010.)

22       66. Management was not able to determine the purposes of various transactions  
23 because there was often no backup for the transfers. For instance, when checks were used,  
24 generally there were no check requests or other documentation. When wire transfers were used,  
25 amounts transferred were rounded up, again without backup. An effort was made to keep copies  
26 of the supporting vendor payables that were being funded, but this was not until mid to late 2007.  
27 However, for some transfers, there was no documentation except that the Defendant's bank

1 account was near zero and funds were needed to cover outstanding obligations, including  
 2 payroll. (March 8, 2010 Declaration of Shondale Seymour, ¶ 87 and live testimony)

3       67. In sum, even when money could be followed from one entity to another, often the  
 4 underlying purposes of the transactions could not be determined and substantiated. (March 8,  
 5 2010 Declaration of Shondale Seymour, ¶ 88 and live testimony on March 18, 2010.)

6       68. At the end of February 2008, Debtor and some, or all, of the Affiliated  
 7 Defendants transferred funds among each other in an effort to balance the intercompany  
 8 transfers, despite a lack of understanding for the purposes of the transactions. (March 8, 2010  
 9 Declaration of Shondale Seymour, ¶ 89 and live testimony on March 18, 2010.)

10      69. At the conclusion of that process, SK Foods was left with approximately \$9  
 11 million in unpaid receivables because the Affiliated Defendants had insufficient capital to repay  
 12 their obligations. (March 8, 2010 Declaration of Shondale Seymour, ¶ 90 and live testimony on  
 13 March 18, 2010.)

14      70. According to SK Foods' books and records (March 8, 2010 Declaration of  
 15 Shondale Seymour, ¶ 109), the following transfers of funds or assets, among others, were made  
 16 by SK Foods to SMC:

Date	Amount	Description in General Ledger
12/31/2008	\$104,621	Liabilities
2/10/2009	\$82,300	Liabilities
2/27/2009	\$82,300	Liabilities

22      71. According to SK Foods' books and records (March 8, 2010 Declaration of  
 23 Shondale Seymour, ¶ 110), the following transfers of funds or assets, among others, appear to  
 24 have been made by SK Foods to the SSR Trust:

Date	Amount	Description in General Ledger
12/28/2007	\$750,000	Capital – S. Salyer, Revocable Trust

1	12/30/2007	\$500,000	Rent/Lease – Bins/Drums
2	12/28/2008	\$1,000,000	
3	4/14/2008	\$500,000	Capital – S. Salyer, Revocable Trust
4	4/14/2008	\$100,000	Capital – S. Salyer, Revocable Trust
5	4/14/2008	\$50,000	Capital – S. Salyer, Revocable Trust
6	6/16/2008	\$210,000	Capital – S. Salyer, Revocable Trust
7	9/15/2008	\$240,000	Capital – S. Salyer, Revocable Trust
8	12/30/2008	\$250,000	Accounts Payable – Related Party
9	12/30/2008	\$225,000	Accounts Payable – Related Party
10	12/30/2008	\$650,000	Capital – S. Salyer, Revocable Trust
11			

12. According to SK Foods' books and records (March 8, 2010 Declaration of  
 13 Shondale Seymour, ¶ 111), the following transfers of funds or assets, among others, appear to  
 14 have been made by SK Foods to SK Frozen Foods:

Date	Amount	Description in General Ledger
6/12/2008	\$292,875	Accounts Receivable – Related Parties
9/26/2008	\$586,244	Accounts Payable – Related Party
1/20/2009	\$59,718	Accounts Receivable – Related Parties
2/25/2009	\$51,628	Accounts Payable – Related Party

22. According to SK Foods' books and records (March 8, 2010 Declaration of  
 23 Shondale Seymour, ¶ 112), the following transfers of funds or assets, among others, appear to  
 24 have been made by SK Foods to SKPM:

Date	Amount	Description in General Ledger
1/28/2008	\$2,298,396	I/C CASH – SKPM CORP

1	11/25/2008	\$126,191	Accounts Payable – Related Party
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2  
3 74. According to SK Foods' books and records (March 8, 2010 Declaration of  
4 Shondale Seymour, ¶ 113), the following transfers of funds or assets, among others, appear to  
5 have been made by SK Foods to SS Farms:

Date	Amount	Description in General Ledger
9/3/2007	\$278,924	CLEARING ACCOUNT
9/3/2007	\$235,880	CLEARING ACCOUNT
9/3/2007	\$115,026	CLEARING ACCOUNT
9/4/2007	\$1,103,041	GROWER FEES WITHHELD
9/4/2007	\$359,061	RAW MATERIAL INVENTORY - PROCESSED
10/2/2007	\$1,052,333	GROWER FEES WITHHELD
10/2/2007	\$1,021,887	GROWER FEES WITHHELD
10/2/2007	\$372,112	RAW MATERIAL INVENTORY - PROCESSED
10/2/2007	\$360,864	RAW MATERIAL INVENTORY - PROCESSED
10/12/2007	\$286,531	CLEARING ACCOUNT
10/12/2007	\$98,913	CLEARING ACCOUNT
10/16/2007	\$1,119,279	GROWER FEES WITHHELD
10/16/2007	\$399,587	RAW MATERIAL INVENTORY - PROCESSED
10/26/2007	\$171,760	CLEARING ACCOUNT
10/26/2007	\$102,774	CLEARING ACCOUNT
10/26/2007	\$71,557	CLEARING ACCOUNT
11/1/2007	\$433,037	CLEARING ACCOUNT
11/1/2007	\$150,565	CLEARING ACCOUNT
11/6/2007	\$130,263	CLEARING ACCOUNT
11/6/2007	\$83,497	CLEARING ACCOUNT
11/6/2007	\$70,139	CLEARING ACCOUNT
11/6/2007	\$56,341	CLEARING ACCOUNT
11/6/2007	\$52,847	CLEARING ACCOUNT
11/8/2007	\$169,904	CLEARING ACCOUNT
11/8/2007	\$114,310	CLEARING ACCOUNT
11/8/2007	\$94,449	CLEARING ACCOUNT
11/8/2007	\$68,024	CLEARING ACCOUNT
11/8/2007	\$63,293	CLEARING ACCOUNT
11/16/2007	\$1,027,111	GROWER FEES WITHHELD
11/16/2007	\$398,680	INTEREST EXP PAYABLE AFFILIATED LT

1	11/16/2007	\$110,953	RAW MATERIAL INVENTORY - PROCESSED
2	11/16/2007	\$97,861	RAW MATERIAL INVENTORY - PROCESSED
3	11/16/2007	\$97,686	RAW MATERIAL INVENTORY - PROCESSED
4	11/16/2007	\$97,104	RAW MATERIAL INVENTORY - PROCESSED
5	11/16/2007	\$96,383	RAW MATERIAL INVENTORY - PROCESSED
6	11/16/2007	\$94,244	RAW MATERIAL INVENTORY - PROCESSED
7	11/16/2007	\$93,318	RAW MATERIAL INVENTORY - PROCESSED
8	11/16/2007	\$92,861	RAW MATERIAL INVENTORY - PROCESSED
9	11/16/2007	\$92,029	RAW MATERIAL INVENTORY - PROCESSED
10	11/16/2007	\$86,231	RAW MATERIAL INVENTORY - PROCESSED
11	11/16/2007	\$85,066	RAW MATERIAL INVENTORY - PROCESSED
12	11/16/2007	\$75,744	RAW MATERIAL INVENTORY - PROCESSED
13	11/16/2007	\$75,692	RAW MATERIAL INVENTORY - PROCESSED
14	11/16/2007	\$74,148	RAW MATERIAL INVENTORY - PROCESSED
15	11/16/2007	\$73,321	RAW MATERIAL INVENTORY - PROCESSED
16	11/16/2007	\$68,608	RAW MATERIAL INVENTORY - PROCESSED
17	11/16/2007	\$66,159	RAW MATERIAL INVENTORY - PROCESSED
18	11/16/2007	\$62,425	RAW MATERIAL INVENTORY - PROCESSED
19	11/16/2007	\$61,795	RAW MATERIAL INVENTORY - PROCESSED
20	11/16/2007	\$60,099	RAW MATERIAL INVENTORY - PROCESSED
21	11/16/2007	\$57,500	RAW MATERIAL INVENTORY - PROCESSED
22	11/16/2007	\$57,300	RAW MATERIAL INVENTORY - PROCESSED
23			
24			
25			
26			
27			
28			

1	11/28/2007 <sup>1</sup>	\$318,623	ACCOUNTS PAYABLE - ACCRUED
2	11/28/2007	\$112,213	ACCOUNTS PAYABLE - ACCRUED
3	12/14/2007	\$405,078	RAW MATERIAL INVENTORY - PROCESSED
4	12/20/2007	\$369,568	RAW MATERIAL INVENTORY - PROCESSED
5	1/3/2008	\$1,049,863	GROWER FEES WITHHELD
6	1/3/2008	\$884,318	GROWER FEES WITHHELD
7	1/3/2008	\$666,470	GROWER FEES WITHHELD
8	1/3/2008	\$336,698	RAW MATERIAL INVENTORY - PROCESSED
9	1/3/2008	\$285,889	RAW MATERIAL INVENTORY - PROCESSED
10	1/15/2008	\$5,428,708	I/C CASH - SS FARMS
11	1/31/2008	\$4,000,000	ACCOUNTS PAYABLE - ACCRUED
12	3/17/2008	\$550,000	ACCOUNTS PAYABLE - ACCRUED
13	3/18/2008	\$225,361	
14	3/27/2008	\$100,000	UNKNOWN
15	4/1/2008	\$275,000	UNKNOWN
16	4/7/2008	\$300,000	UNKNOWN
17	4/8/2008	\$191,462	UNKNOWN
18	5/9/2008	\$500,000	paydown loan -SSF
19	5/14/2008	\$600,000	paydown loan -SSF
20	5/15/2008	\$200,000	paydown loan -SSF
21	5/28/2008	\$355,764	paydown ssf note
22	5/28/2008	\$50,000	paydown ssf note
23	6/4/2008	\$300,000	paydown note SSF
24	6/6/2008	\$500,000	ST (90 day) Notes Receivable SSF
25	6/6/2008	\$180,068	Notes Payable SSF pay off
26	7/1/2008	\$191,765	Notes Payable SSF pay off
27	8/4/2008	\$1,000,000	PAYOUT 7/21 SSF LOAN TO SKF \$1.5M 8/4
28	8/6/2008	\$51,490	PMT ACCRUED INTEREST SSF 8/6
	8/14/2008	\$1,599,179	
	8/22/2008	\$1,507,034	
	8/28/2008	\$1,557,675	
	9/16/2008	\$1,134,298	08WK7HAUL-SKF&CCC90%
	9/29/2008	\$2,691,813	

<sup>1</sup> The two entries for 11/28/07 are listed on the books of RHM rather than SK Foods.

1	10/7/2008	\$1,562,493	
2	10/14/2008	\$1,500,796	
3	10/17/2008	\$1,458,232	
4	10/23/2008	\$1,353,144	
5	10/24/2008	\$102,636	
6	10/28/2008	\$1,054,284	
7	10/30/2008	\$85,138	Grower Payments 11-3-08
8	11/4/2008	\$440,434	08WK15HAUL-SKF&CCC90%
9	11/4/2008	\$131,499	08WK16HAUL-SKF&CCC90%
10	11/4/2008	\$81,517	water purchase
11	11/5/2008	\$318,840	Pepper Harvest
12	11/5/2008	\$163,216	Pepper Harvest
13	11/13/2008	\$603,198	
14	1/2/2009	\$600,000	GLV-000006739
15	1/12/2009	\$500,000	ST Advance pymt Rltd Pty SSF
16	1/14/2009	\$1,500,000	ST Advance Receipt Rltd Pty SSF
17	1/14/2009	\$756,000	ST Advance Receipt Rltd Pty SSF
18	1/14/2009	\$500,000	
19	2/27/2009	\$1,025,000	Repayment of Short term Borrowings 1mm & 25k

75. According to SK Foods' books and records (March 8, 2010 Declaration of Shondale Seymour, ¶ 114), the following transfers of funds or assets, among others, appear to have been made by SK Foods to SSC Farming:

Date	Amount	Description in General Ledger
10/18/2007	\$75,000	Other Long Term Assets
7/24/2008	\$100,000	Accounts Payable – Related Party
7/25/2008	\$50,000	Rent/Lease – General
8/7/2008	\$150,000	Accounts Payable – Related Party
8/20/2008	\$464,866	Accounts Payable – Growers
10/13/2008	\$77,201	RAW TOMATOES CONVENTIONAL
10/20/2008	\$85,160	RAW TOMATOES CONVENTIONAL
11/11/2008	\$316,000	Accounts Payable – Related Party

76. According to SK Foods' books and records (March 8, 2010 Declaration of Shondale Seymour, ¶ 115), the following transfers of funds or assets, among others, appear to have been made by SK Foods to the SSC I:

<b>Date</b>	<b>Amount</b>	<b>Description in General Ledger</b>
8/6/2008	\$160,000	Accounts Payable – Related Party
2/20/2008	\$66,357	Accounts Payable – Growers
8/26/2008	\$235,813	Accounts Payable – Growers
9/15/2008	\$65,606	Accounts Payable – Growers
11/11/2008	\$187,925	Accounts Payable – Related Party
11/13/2008	\$149,148	Accounts Payable - Growers

77. According to SK Foods' books and records (March 8, 2010 Declaration of Shondale Seymour, ¶ 116), the following transfers of funds or assets, among others, appear to have been made by SK Foods to SSC II:

<b>Date</b>	<b>Amount</b>	<b>Description in General Ledger</b>
8/6/2008	\$230,000	Accounts Payable – Related Party
8/20/2008	\$300,043	Accounts Payable – Growers
8/26/2008	\$345,685	Accounts Payable – Growers
10/24/2008	\$99,191	Accounts Payable – Growers
10/30/2008	\$119,183	Accounts Payable – Growers
10/30/2008	\$110,318	Accounts Payable – Growers
11/11/2008	\$161,531	Accounts Payable – Related Party
11/13/2008	\$325,366	Accounts Payable -- Growers

78. According to SK Foods' books and records (March 8, 2010 Declaration of Shondale Seymour, ¶ 117), the following transfers of funds or assets, among others, appear to have been made by SK Foods to SSC III:

<b>Date</b>	<b>Amount</b>	<b>Description in General Ledger</b>

1	10/14/2008	\$270,696	Accounts Payable – Growers
2	10/30/2008	\$282,620	Accounts Payable – Growers
3	11/13/2008	\$833,255	Accounts Payable -- Growers

4  
5       79. According to the SK Foods' books and records (March 8, 2010 Declaration of  
6 Shondale Seymour, ¶ 118), the following transfers of funds or assets, among others, appear to  
7 have been made by SK Foods to SKF Aviation:

Date	Amount	Description in General Ledger
9/12/2007 <sup>2</sup>	\$92,608	Travel services
10/15/2007	\$88,450	Travel expenses
10/15/2007	\$68,950	Travel expenses
11/30/2007	\$165,060	Travel expenses
12/28/2007	\$1,500,000	Prepaid Services
1/31/2008	\$1,755,651	Accounts Payable – Accrued
8/6/2008	\$269,000	Accounts Payable – Related Party
12/30/2008	\$100,000	Prepaid Services

18       80. According to the SK Foods' books and records (March 8, 2010 Declaration of  
19 Shondale Seymour, ¶ 119), the following transfers of funds or assets, among others, appear to  
20 have been made by SK Foods to CSSS:

Date	Amount	Description in General Ledger
12/28/2007	\$51,108	OUT-BOUND FREIGHT EXPENSE
1/15/2008	\$1,590,954	RAW MATERIAL INV - DRUM LINE
1/15/2008	\$330,138	CONSTRUCTION IN PROGRESS
5/16/2008	\$104,280	wired 5/8/08

28       <sup>2</sup> This entry is on the books of RHM rather than SK Foods.

1	6/10/2008	\$111,823	EFT 6/10/08
2	7/3/2008	\$128,542	EFT 2008185002051
3	7/30/2008	\$119,755	EFT 2008212001082
4	8/21/2008	\$60,650	
5	9/24/2008	\$51,509	eft 9/24
6	10/1/2008	\$128,352	
7	10/10/2008	\$65,634	
8	10/27/2008	\$116,596	
9	11/6/2008	\$179,336	
10	11/21/2008	\$236,031	
11	12/12/2008	\$101,682	
12	12/29/2008	\$66,430	
13	1/27/2009	\$77,096	Inv cvs2008-149 & cvs2008-142
14	4/27/2009	\$54,870	
15	5/1/2009	\$151,203	

19        81.      SK Foods and Westlands Water District entered into a Real Estate Purchase and  
 20 Sale Agreement and Escrow Instructions on October 25, 2005. March 8, 2010 Declaration of  
 21 Shondale Seymour, ¶61, Exhibit 2. Pursuant to that Agreement, the purchase price was \$400.00  
 22 per acre, for a total of \$1,040,912.00. *Id.*

23        82.      After October 25, 2005, several amendments were made to this agreement in  
 24 order to extend the closing date to coincide with the expected issuance of permits from the  
 25 California Regional Water Quality Review Board. Each such amendment was executed by SK  
 26 Foods. *Id.*, ¶62, Exhibit 3. The closing ultimately occurred on or about September 13, 2007. At  
 27

1 the closing, title to this property was not transferred to SK Foods. Instead, SSC I and SSC II  
 2 took title to the various parcels. *Id.*, ¶63, Exhibits 4 and 5.

3       83. Debtor never executed any written assignment of this agreement or the rights  
 4 under it to either SSC I or SSC II. Neither SSC I nor SSC II paid any consideration to SK Foods  
 5 in exchange for the purported assignment of Sk Foods' rights. March 8, 2010 Declaration of  
 6 Shondale Seymour, ¶64. Although SSC I and SSC II furnished the payments, the funds came  
 7 from Blackstone Ranch Corporation, another Affiliate. March 8, 2010 Declaration of Shondale  
 8 Seymour, ¶64.

9       84. On March 17, 2005, SS Farms entered into an agreement to purchase a parcel of  
 10 real estate from Elmer and Ronald Tiahrt ("Tiahrt parcel") for \$698,725.00. March 8, 2010  
 11 Declaration of Shondale Seymour, ¶65. When the sale closed, the deeds were made out to SSC  
 12 rather than SS Farms. March 8, 2010 Declaration of Shondale Seymour, ¶65. SK Foods paid for  
 13 the purchase of this property; SK Foods was never reimbursed. *Id.*, ¶66, Exhibit 6. Another  
 14 parcel (the Rogers parcel) was purchased by SSC on July 13, 2005 for a total of just over \$2.9  
 15 million, which included a payment of \$1,530,942 at closing. *Id.*, ¶67. SK Foods paid \$1.5  
 16 million directly to the escrow company just before closing. *Id.*, ¶67, Exhibit 7. The transfers  
 17 from SK Foods to SSC described above were for the purpose of allowing SSC to purchase these  
 18 parcels of land. *Id.* ¶¶ 65-67.

## CONCLUSIONS OF LAW

21       1. The Court finds that it has jurisdiction over the parties and this dispute.

22       2. All Defendants voluntarily appeared in this proceeding, filed opposition papers  
 23 and introduced evidence, and at no time did the Defendants raise any objection to this Court's  
 24 jurisdiction or ability to hear the Trustee's motion. Therefore, any such objections are waived.

25       3. At the hearing on the Application for a Temporary Restraining order, the Court  
 26 found that the Trustee was not entitled to an injunction in the Breach of Fiduciary Duty  
 27 complaint, and comes to the same conclusion here. The basis for that conclusion is that the  
 28

1 Trustee's complaint seeks only monetary damages, and does not make a claim for any type of  
 2 equitable relief. As such, the remedy of a preliminary injunction is not available in that action.

3       4. As a result of that ruling, the Court has not made any findings or conclusions with  
 4 respect to the evidence presented in support of the Breach of Fiduciary duty claims.  
 5

6 Evidentiary Objections

7       5. The Defendants raised numerous objections to the evidence submitted by the  
 8 Trustee. Generally, these objections related to a lack of authenticity, foundation and hearsay.  
 9

10      6. However, at the preliminary injunction stage, it is often difficult to obtain  
 11 affidavits from persons who would be competent to testify at trial. For that reason, Courts have  
 12 discretion to consider evidence that might be inadmissible at the time of a trial upon the merits.  
 13

As the United States Court of Appeals for the Ninth Circuit has held:

14      The urgency of obtaining a preliminary injunction necessitates a prompt  
 15 determination and makes it difficult to obtain affidavits from persons who would  
 16 be competent to testify at trial. The trial court may give even inadmissible  
 17 evidence some weight, when to do so serves the purpose of preventing irreparable  
 18 harm before trial. 11 C. Wright and A. Miller, Federal Practice and Procedure,  
 19 Civil, § 2949 at 471 (1973).

20      *Flynt Distributing Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. Cal. 1984). See also *Houdini*  
 21 *Inc. v. Goody Baskets LLC*, 166 Fed. Appx. 946, 947 (9th Cir. 2006) ("[T]he district court did  
 22 not abuse its discretion in considering hearsay . . . because the rules of evidence do not strictly  
 23 apply to preliminary injunction proceedings."); *Republic of Philippines v. Marcos*, 862 F.2d  
 24 1355, 1363 (9<sup>th</sup> Cir. 1988) ("It was within the discretion of the district court to accept this  
 25 hearsay for purposes of deciding whether to issue the preliminary injunction.").

26      7. The district courts in this circuit likewise have held that the rules of evidence to  
 27 not strictly apply to preliminary injunction hearings. For instance, in *Gonzalez v. Wells Fargo*  
 28 *Bank*, 2009 U.S. Dist. LEXIS 101036 (N.D. Cal. Oct. 29, 2009), the Court cited *Flynt*  
*Distributing* and *Houdini*, and held that: "Given the evidentiary discretion granted to district  
 courts entertaining a motion for a preliminary injunction, this court accepts the documents

1 submitted by defendants. In particular, because Gonzalez does not suggest that any of the  
2 documents are anything other than what they purport to be, the court sees no reason to presume  
3 otherwise. Gonzalez's motion to exclude the documents is DENIED." Similarly, in *Dr. Seuss*  
4 *Ents. v. Penguin Books USA, Inc.*, 924 F. Supp. 1559, 1562 (S.D. Cal. 1996), the Court held as  
5 follows: "The exigencies of preliminary relief often prevent the movant from procuring  
6 supporting evidence in a form that would meet Rule 56(e)'s requirement of evidence admissible  
7 at trial. Such evidence may yet be considered by the court, which has discretion to weigh the  
8 evidence as required to reflect its reliability." See also *Puricle, Inc. v. Church & Dwight Co.*,  
9 568 F. Supp.2d 1144, 1147 (C.D. Cal. 2008) (citing *Flynt*, and holding that the "Court may  
10 consider inadmissible evidence on a motion for preliminary injunction"); *Rosen Ent. Sys., LP v.*  
11 *Eiger Vision*, 343 F. Supp. 2d 908, 912 (C.D. Cal. 2004) (where Court used its discretion in  
12 considering otherwise inadmissible evidence); *Moose Creek, Inc. v. Abercrombie & Fitch Co.*,  
13 331 F. Supp. 2d 1214, 1225 n.4 (C.D. Cal. 2004) (in a preliminary injunction hearing, the Court  
14 held: "Rule 901(a) defines a standard of admissibility that is rather general or elastic: the  
15 evidence must be 'sufficient to support a finding that the matter in question is what its proponent  
16 claims.' Although Plaintiffs are correct that these internet documents are not individually  
17 authenticated, the Court finds that at this stage they satisfy Rule 901(a). Moreover, the Court  
18 expects that Abercrombie could properly authenticate the materials before trial or summary  
19 judgment proceedings.").

21       8.     The Court finds that the Trustee is not to be held to the same standards of  
22 admissibility as in a trial on the merits, and that the Court in its discretion may consider evidence  
23 which would be inadmissible at trial. Nevertheless, for much of the evidence, the Trustee has  
24 complied with this higher standard for admissibility at trials on the merits.

25       9.     The Court sustains the Defendants' objections to the use of an Affidavit from  
26 Special Agent Artley. The Court will take judicial notice of the fact that an affidavit was filed,  
27 but has not considered the contents of that Affidavit.  
28

1       10.     The Defendants also objected to the use of bank records documenting transfers  
2 overseas and emails from Mr. Salyer's email accounts. These objections are overruled.

3       11.     The documents at issue are Defendants' own documents, and Defendants could  
4 easily produce the original documents to verify the authenticity of the exhibits. The documents  
5 upon which the Trustee relies are emails from Mr. Salyer's email account and bank records for  
6 accounts maintained by the Defendants. Defendants themselves have the documents necessary  
7 to ascertain whether the exhibits submitted by the Trustee are authentic. Defendants have not  
8 raised any facts to question the authenticity of the documents; rather, they simply seek to put the  
9 Trustee to his proof.

10      12.     The Trustee served Defendants with subpoenas to produce authentic copies of  
11 these documents, and the Defendants' failure to produce those documents has prevented the  
12 Trustee from providing any further evidence as to authentication. Defendants should not be  
13 permitted to demand proof of authenticity, especially at the preliminary injunction stage, when  
14 such proof is in their possession.

15      13.     Because these are Defendants' own documents, they should be required to  
16 produce the documents at the hearing or come forward with some reason to suggest that the  
17 exhibits are not what they purport to be.

18      14.     The bank records submitted from Bank of the West (Exhibit W) and Mechanics'  
19 Bank (Exhibits JJ, KK and LL) are business records of those institutions, as established in the  
20 declarations from their custodians of record. Declaration of Patrick Salcido, Bank of the West  
21 (Doc. No. 39) (Exhibit W); Declaration of Annette Bartlett, Mechanics' Bank (Doc. No. 40)  
22 (Exhibits JJ, KK and LL).

23      15.     The email exhibits have sufficient indicia of trustworthiness to satisfy the rules of  
24 authentication. Pursuant to Rule 901 of the Federal Rules of Evidence, authentication requires  
25 only sufficient evidence so that a jury could find that the matter in question is what its proponent  
26 claims. *United States v. Safavian*, 435 F. Supp. 2d 36, 38 (D.D.C. 2006). The distinctive  
27 characteristics of the documents themselves may satisfy this standard. F.R.E. 901(b)(4). Emails

1 may be authenticated in this fashion. *Safavian*, 435 F. Supp. 2d at 40; *United States v. Siddiqui*,  
 2 235 F.3d 1318, 1322-23 (11<sup>th</sup> Cir. 2000). As the 11<sup>th</sup> Circuit Court of Appeals noted:

3 Printouts of email messages ordinarily bear the sender's email address, providing  
 4 circumstantial evidence that the message was transmitted by the person identified in the  
 5 email address. . . . Use of the reply function indicates that the reply message was sent to  
 6 the sender's listed email address. The contents of the email may help show  
 authentication by revealing details known only to the sender and the person receiving the  
 message.

7 *Id.* (citing Weinstein on Evidence, ¶900.07[3][c]).

8 16. Here, the documents show that Mr. Salyer is the author and recipient of the  
 9 emails. They identify the address as fscott.salyer@gmail.com and scott@scottssalyer.net (See  
 10 Exhibit Y, AA, BB, CC, DD, HH, II). Other emails demonstrate that the address  
 11 fscott.salyer@gmail.com belongs to "Scott Salyer" (see Exhibit Z, AA, BB, CC, HH, II). The  
 12 text of the emails also refer to meetings with "Mr. Salyer" (Exhibits BB). Many of the emails  
 13 refer to the Australian and New Zealand operations, which reference the Foreign Entities  
 14 (Exhibit Z). Other emails are from "JJ", which Defendants have conceded was Mr. Salyer's  
 15 personal assistant, Jeanne Johnston (Exhibit GG). And some emails specifically reference SK  
 16 Foods, LP (Exh. II). Finally, the dates and amounts of the transfers are consistent with those set  
 17 forth in the bank records (Exhibits JJ, KK, LL). Therefore, for purposes of this hearing these  
 18 emails provide sufficient information necessary to establish that they are what they purport to  
 19 be: emails to and from Mr. Salyer.

21 17. Emails sent by a defendant or his representative or employees are admissions and  
 22 therefore not hearsay. *Perfect 10, Inc. v. Cybernet Venues, Inc.*, 213 F. Supp. 2d 1146, 1155  
 23 (C.D. Cal. 2002). Alternatively, they qualify as business records. *Lorraine v. Markel American  
 24 Ins. Company*, 241 F.R.D. 534, 571 (D. Md. 2007); *Rambus Inc. v. Infineon Tech AG*, 348 F.  
 25 Supp. 2d 698, 706 (E.D. Va. 2004).

26 18. In sum, for purposes of this hearing the emails and the bank records are  
 27 admissible. Even if this Court were to find that the evidence was insufficient to justify  
 28 admission at a trial on the merits (which it does not so find), there is more than sufficient

1 evidence at this stage, and the Court will exercise its discretion to consider those documents,  
2 giving them the weight appropriate.

3 19. The Defendants have also objected to the testimony of Shondale Seymour as  
4 lacking foundation.

5 20. The Court allowed the Trustee to present additional foundation through direct  
6 examination of Ms. Seymour, who appeared live at the March 18, 2010 hearing at Defendants'  
7 request. After hearing the testimony of Ms. Seymour, including the cross-examination of Ms.  
8 Seymour by Defendants' counsel, the Court is satisfied that the Trustee has set forth sufficient  
9 foundation for her testimony to be admitted and that she has personal knowledge of the  
10 statements made in her March 8, 2010 Declaration. In particular, the Court notes that Ms.  
11 Seymour was Chief Financial Officer of the Debtors as well as a number of the Defendants, had  
12 access to all of the records of the Defendants and regularly accessed and reviewed those records  
13 as part of her duties. Ms. Seymour was able to identify the specific source(s) for many of the  
14 statements contained in her declarations, and the Court finds her testimony to be credible and  
15 persuasive. Therefore, the Defendants' objections to Ms. Seymour's testimony were overruled.  
16

17 Requirements for a Preliminary Injunction

19 21. A party seeking a preliminary injunction "must establish that he is likely to  
20 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
21 relief, that the balance of equities tips in his favor, and that an injunction is in the public  
22 interest." *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249  
23 (2008).

24 22. The likelihood of irreparable harm must be imminent. *Caribbean Marine*  
25 *Services Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988); *Los Angeles Mem'l Coliseum v.*  
26 *Nat'l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980). Furthermore, "[s]peculative injury  
27 does not constitute irreparable injury sufficient to warrant granting a preliminary injunction."  
28 *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984). "A plaintiff must

1 do more than merely allege imminent harm...; a plaintiff must demonstrate immediate threatened  
 2 injury as a prerequisite to preliminary injunctive relief." *Caribbean Marine Servs. Co.*, 844 F.2d  
 3 at 674.

4       23. Here, even without having the benefit of discovery and even having postponed  
 5 review of documents properly in the Trustee's possession, the Trustee has produced sufficient  
 6 evidence to support the issuance of a preliminary injunction by establishing the likelihood of  
 7 success of the merits of his claims.

8       24. Based on this evidence, the Trustee has established a likelihood of success on its  
 9 claim for substantive consolidation, its claims to recover fraudulent and/or preferential transfers,  
 10 and its quiet title claims.

11       25. Substantive consolidation is designed to prevent a debtor from insulating funds  
 12 and defeating creditors by transferring assets and funds among various interrelated companies.  
 13 This doctrine was adopted and approved by the United States Court of Appeals for the Ninth  
 14 Circuit in *In re Bonham*, 229 F.3d 750, 763 (9<sup>th</sup> Cir. 2000), and has been considered part of the  
 15 bankruptcy court's general equitable powers since the passage of the Bankruptcy Act of 1898.

16       See also *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215, 219 (1941).

17       26. In *Bonham*, the debtor was the sole shareholder and director of two non-debtor  
 18 corporations. Evidence demonstrated that the debtor had disregarded the integrity of the  
 19 corporate entities, had comingled assets, and had treated the entities interchangeably. In  
 20 particular, the debtor had transferred investment income from one corporation to service debt on  
 21 the other, and used corporate funds toward her own personal finances. The Court of Appeals  
 22 found that substantive consolidation was appropriate so that the various entities could be viewed  
 23 as a single debtor with consolidated assets, from which all claims against the consolidated  
 24 debtors are satisfied. *Id.* at 763.

25       27. Substantive consolidation essentially allows a court to pierce the corporate veil of  
 26 the related entities so that creditors will not be treated inequitably simply as a result of the debtor  
 27 transferring funds or other assets between the related entities. Indeed, the primary purpose of

1 substantive consolidation is to “ensure the equitable treatment of all creditors.” *Id.* at 764.  
 2 “Without the check of substantive consolidation, debtors could insulate money through transfers  
 3 among inter-company shell corporations with impunity.” *Id.*

4       28. Substantive consolidation is appropriate where “either (1) the creditors dealt with  
 5 the consolidated entities as if they were the same, or (2) the affairs of the consolidated entities  
 6 are so entangled that it would not be feasible to identify and allocate all of their assets and  
 7 liabilities.” *Id.* at 771. Either of the two factors is sufficient to order substantive consolidation.  
 8 *Id.* at 767. For the second factor, substantive consolidation is justified where no accurate  
 9 allocation of assets is possible or where “the time and expenses necessary even to attempt to  
 10 unscramble them [is] so substantial as to threaten the realization of any net assets for all the  
 11 creditors.” *Id.*

12       29. Courts have identified a number of factors that are relevant in assessing whether  
 13 substantive consolidation is appropriate. These factors include: (1) common ownership; (2)  
 14 pervasive control; (3) confused intermingling of business activity, assets or management; (4) thin  
 15 capitalization, (5) non-observance of corporate formalities; (6) absence of corporate records; (7)  
 16 no payment of dividends; (8) insolvency at the time of the litigated transaction; (9) siphoning  
 17 away corporate assets by dominant shareholders; (10) nonfunctioning of officers and directors;  
 18 (11) use of the corporation for transactions of the dominant shareholders; and (12) use of the  
 19 corporation in promoting fraud. *See In re Logistics Information Systems, Inc.*, No. 10886-JBR,  
 20 2009 Bankr. LEXIS 651 (Bankr. Mass., Mar. 18, 2009).

21       30. The facts presented demonstrate a likelihood of success on the merits of this  
 22 claim. In particular, the above-recited facts address most of the factors Courts may consider  
 23 when assessing the propriety of substantive consolidation.

24       31. The Court does not expect the Trustee to come forward with expert testimony at  
 25 this stage of the litigation. The Court has sufficient evidence to preliminarily evaluate the  
 26 various factors that weigh on the question of substantive consolidation, and this evidence  
 27 demonstrates that the Trustee is likely to succeed on the merits of his claims.

1       32. As to the claims for fraudulent and/or preferential transfers, the Trustee has  
2 similarly demonstrated that he is likely to prevail on the merits.

3       33. To prevail under section 548 of the Bankruptcy Code, for example, the Trustee  
4 must prove:

- 5             • The debtor transferred an interest in property;
- 6             • The transfer took place within two years of the filing of the petition;
- 7             • And either (1) the transfer was made with actual intent to hinder, delay or  
8 defraud creditors or (2) the debtor received less than a reasonable  
9 equivalent value in exchange for such transfer and the debtor was  
10 insolvent on the date of such transfer.

11 U.S.C. § 548.

12       34. SK Foods has presented sufficient evidence of these transfers, the date of the  
13 transfers and of the alleged fact that they were made for no or inadequate consideration. March  
14 8, 2010 Declaration of Shondale Seymour, ¶¶60-85, 109-119; May 11, 2009 Declaration of Paul  
15 Forgue, ¶17. SK Foods has similarly presented sufficient evidence that SK Foods was insolvent  
16 at the time of these transfers. March 8, 2010 Declaration of Shondale Seymour, ¶¶98-108.

17       35. The Trustee has established a likelihood of success on the merits of those claims.

18       36. The Trustee likewise has established a likelihood of success on the merits of his  
19 quiet title action.

20       37. Some of the real estate in question was purchased with funds from the Debtors.

21       38. For other parcels, the Debtors had the rights to acquire those properties but for  
22 some unexplained reason, at closing, the properties were titled in the name of the Farming  
23 Entities, with no apparent consideration paid for the transfer of those rights.

24       39. It is well-settled that irreparable harm consists of harm that cannot be remedied by  
25 an award of monetary damages, or an injury that cannot be quantified monetarily. *Ross-Simons*  
26 *of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 18 (1<sup>st</sup> Cir. 1996); *Campbell Soup Co. v.*  
27 *ConAgra, Inc.*, 977 F.2d 86, 91 (3d Cir. 1992). In the event an injunction is not issued and

1 Defendants are permitted to transfer or sell their assets beyond the reach of this Court, the  
2 Trustee, and the creditors of the estates, will suffer irreparable harm.

3       40.     The remedy sought in the substantive consolidation litigation is to pool the assets  
4 and liabilities of the Defendants with those of the Debtors, so that creditors of all entities will be  
5 treated equally. By selling off the primary assets of these other entities, Salyer and the  
6 Defendants are removing any value in these entities. If these assets are sold or transferred, the  
7 Trustee's ability to collect these assets from the purchasers or their assigns (or from overseas  
8 accounts) could be compromised.

9       41.     Similarly, the remedy sought in the fraudulent and preferential transfer claims is  
10 the return of the property transferred. Return of the property is a remedy provided by both  
11 federal and California law under these circumstances. 11 U.S.C. §§ 548(a), 550(a); Cal. Civ.  
12 Code §§ 3439.04, 3439.05, 3439.07. If Defendants sell these assets or move them beyond the  
13 reach of the Court, then this Court cannot provide the Trustee with the remedy to which he is  
14 entitled. Thus, Courts have held that a preliminary injunction freezing the transfer of assets is  
15 proper where fraudulent conveyance is alleged in a bankruptcy case. *In re Focus Media, Inc.*,  
16 387 F.3d 1077, 1086-87 (9<sup>th</sup> Cir. 2004). In such cases, the preliminary relief protects the Court's  
17 ability to grant the final relief requested. *United States ex rel. Rahman v. Oncology Assocs.,*  
18 *P.C.*, 198 F.3d 489, 501 (4<sup>th</sup> Cir. 1999). "A preliminary injunction is always appropriate to grant  
19 intermediate relief of the same character as that which may be granted finally." *Reebok Int'l,*  
20 *Ltd. v. Marnatech Enterprises, Inc.*, 970 F.2d 552, 560-61 (9<sup>th</sup> Cir. 1992) (internal quotes  
21 omitted).

22       42.     If an injunction is not granted, the assets of the defendants, including the funds  
23 that were transferred from Debtors, will be further transferred and the Trustee's ability to recover  
24 those funds could be compromised.

25       43.     If the Defendants are permitted to sell their real estate, the Trustee will have an  
26 inadequate remedy in his quiet title action. The Trustee seeks title to those properties, and if they  
27  
28

1 are transferred to bona fide purchasers, the Trustee's ability to recover those assets may be  
2 compromised.

3       44. Defendants have shown their willingness to sell assets, even in the face of this  
4 Court's orders in the Drum-Line Litigation. Moreover, the Trustee has submitted evidence of  
5 transfer of assets to overseas accounts. Prior misconduct in hiding or depleting assets is  
6 "extremely relevant to the concern that [defendants] might conceal or dissipate assets" again and  
7 is properly considered in granting an injunction. *Connecticut General Life Ins. Co. v. New*  
8 *Images of Beverly Hills*, 321 F.3d 878, 882 (9<sup>th</sup> Cir. 2003).

9       45. Given the Defendants' past conduct in transferring assets, it is reasonably  
10 foreseeable that these entities will continue to do so unless enjoined.

11       46. The Trustee has established that he will suffer immediate, irreparable harm if an  
12 injunction is not granted.

13       47. Because a preliminary injunction is an extraordinary remedy, "[i]n each case,  
14 courts 'must balance the competing claims of injury and must consider the effect on each party  
15 of the granting or withholding of the requested relief.'" *Winter, supra*, 129 S.Ct. at 376 (citing  
16 *Amoco, supra*, 480 U.S. at 542). The issue is whether the injury that the defendant will suffer if  
17 it is enjoined outweighs the injury that plaintiff will suffer from defendant's conduct if it is not  
18 enjoined. *Scotts Co. v. United Industries Corp.*, 315 F.3d 264, 284 (4<sup>th</sup> Cir. 2002).

20       48. The harm to the estate if assets are sold is obvious. With respect to the real estate  
21 purportedly owned by the Farming Entities, the Debtors have an interest in the property and  
22 Defendants are trying to sell that property. With respect to other assets, the Trustee likewise  
23 claims an interest in those assets and seeks their return, yet the Defendants are transferring those  
24 assets overseas to a variety of countries.

25       49. On the other hand, there is little or no harm to the Defendants from the entry of  
26 the requested injunction. The language of the Temporary Restraining Order excluded payment  
27 of certain limited expenses that are incurred in the ordinary course of business (regular salaries  
28 of the sole remaining employee, lease or mortgage payments and utilities), and this exception

continues in the Preliminary Injunction. If there is a legitimate reason for the Defendants to immediately liquidate their assets, the Defendants may seek permission from this Court.

50. The balance of harms weighs strongly in favor of granting an injunction.

51. In deciding whether to grant preliminary injunctive relief, Court must “pay particular regard for the public consequences ....” *Winter, supra*, 129 S.Ct. at 376-77. The public has an interest in the successful and just resolution of the affairs of a bankrupt debtor. See *In re PTI Holding Corp.*, 346 B.R. 820, 832-33 (Bankr. D. Nev. 2006); *In re Stadium Management Corp.*, 95 B.R. 264, 269 (Bankr. D. Mass 1988); *In re Monroe Well Service, Inc.*, 67 B.R. 746, 756 (Bankr. E.D. Pa. 1986). Specifically here, there is a public interest in preserving the assets of the estates of the Debtors for the benefit of its creditors. Moreover, it is certainly in the public interest to prevent fraudulent transfers of assets for the purpose of avoiding the claims of creditors, especially where the individuals involved have a track record of doing so.

52. These findings of fact and conclusions of law are to preserve the status quo pending a trial on the Trustee's claims and are not binding at the time of trial on the merits. Accordingly, the Court may come to different findings and/or conclusions at the trial on the merits. *University of Texas v. Camenisch*, 451 U.S. 390 (1981); *Horphag Research, Ltd. v. Garcia*, 475 F.3d 1029, 1035 (9<sup>th</sup> Cir. 2007).

## **CONCLUSION**

In conclusion, the Court finds that the Trustee has demonstrated a likelihood of success on the merits of his claims in the above-captioned adversary proceedings. The Court further finds that the Trustee has demonstrated a likelihood of immediate, irreparable harm if the requested relief is not granted. The Court further finds that no other remedies would provide appropriate relief. The Court further finds that the balance of equities weighs in favor of granting an injunction and that an injunction is in the public interest. For the foregoing reasons,

1 the Court finds that good cause exists for entry of a Preliminary Injunction in form entered by  
2 the Court on March 20, 2010.

3

4 Dated: APR - 5 2010

5 By: Robert Bardwil  
6 ROBERT S. BARDWIL  
7 UNITED STATES BANKRUPTCY JUDGE

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1                   **CERTIFICATE OF MAILING**

2       I, Andrea Lovgren, in the performance of my duties as Deputy  
3       Clerk to the Honorable Robert S. Bardwil, mailed by ordinary mail  
4       a true copy of the attached document to each of the parties  
5       listed below:

6       Gregory Nuti  
7       Schnader Harrison Segal & Lewis  
8       One Montgomery Street, Suite 2200  
9       San Francisco, CA 94104- 5501

10      Thomas Phinney  
11      Parkinson Phinney  
12      400 Capitol Mall, 11th Floor  
13      Sacramento, CA 95814

14      Malcolm Segal  
15      James Mayo  
16      Segal & Kirby, LLP  
17      770 L Street, 1440  
18      Sacramento, CA 95814

19      Larry Lichteneger  
20      Lichtenegger Law Office  
21      3850 Rio Road, #58  
22      Carmel, CA 93923

23      Paul Pascuzzi  
24      Felderstein Fitzgerald  
25      Willoughby & Pascuzzi  
26      400 Capitol Mall, Suite 1450  
27      Sacramento, CA 95814

28      DATE: April 5, 2010

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20                   \_\_\_\_\_  
21                   Deputy Clerk